

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper 7

Filed by: Trial Section Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

JUNICHI IMUTA, JUNJI SAITO and TAKASHI UEDA,

Junior Party,
(Patent 5,616,663),

v.

FRANK KUBER, BERND BACHMANN, WALTER SPALECK,
ANDREAS WINTER and JURGEN ROHRMANN,

Senior Party
(Application 09/001,152).

Patent Interference No. 104,444

Before: McKELVEY, Senior Administrative Patent Judge, and LEE
and TORCZON, Administrative Patent Judges.

McKELVEY, Senior Administrative Patent Judge.

JUDGMENT

A. Background

On 18 October 1999, Yolunda Townes, a paralegal specialist assigned to the Trial Section, had a telephone discussion with Mr. Alan Holler, Esq., of the firm of SHERMAN & SHALLOWAY. Mr. Holler informed Ms. Townes that Mr. Holler had been instructed by his client (JUNICHI IMUTA, JUNJI SAITO and TAKASHI UEDA, the real party in interest being Mitsui Petrochemical Industries, Ltd.) not to respond to the NOTICE DECLARING INTERFERENCE. Imuta is the junior party in this interference. Since the junior party has expressly indicated that it does not intend to prosecute the interference, a judgment on the merits will be entered in favor of the senior party.

B. Order

Upon consideration of the record, including an express indication by counsel for the junior party that the junior party does not intend to prosecute the interference, it is

ORDERED that judgment on priority as to Count 1, the sole count in the interference, is awarded against junior party Junichi Imuta, Junji Saito and Takashi Ueda.

FURTHER ORDERED that judgment on priority as to Count 1 is awarded in favor of senior party Frank Kuber, Bernd Bachmann, Walter Spaleck, Andreas Winter and Jurgen Rohrmann.

FURTHER ORDERED that, on the record before the Board of Patent Appeals and Interferences, senior party Frank Kuber, Bernd Bachmann, Walter Spaleck, Andreas Winter and Jurgen Rohrmann is entitled to a patent containing claims 6-11 and 13-24 (corresponding to Count 1) of Application 09/001,152, filed 30 December 1997.

FURTHER ORDERED that junior party Junichi Imuta, Junji Saito and Takashi Ueda is not entitled to a patent containing claims 1-22 (corresponding to Count 1) of U.S. Patent 5,616,663, granted 1 April 1997, based on application 08/338,810, filed 10 November 1994.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

_____)	
FRED E. McKELVEY, Senior)	
Administrative Patent Judge)	
)	
)	
_____)	
JAMESON LEE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
_____)	
RICHARD TORCZON)	
Administrative Patent Judge)	

cc (via First Class Mail):

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